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No. 83-256

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HARRISON A. WILLIAMS, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

REPLY BRIEF FOR PETITIONER

ERWIN N. GRISWOLD
Counsel of Record
CLAIRE L. SHAPIRO
JONES, DAY, REAVIS & POGUE
1735 Eye Street, N.W.
Washington, D.C. 20006
(202) 861-3898

GEORGE J. KOELZER
JOEL N. KREIZMAN
EVANS, KOELZER, OSBORNE, KREIZMAN & BASSLER
P.O. Box BB
Red Bank, New Jersey 07701
Counsel for Petitioner

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REPLY BRIEF FOR PETITIONER

INTRODUCTION

With total disregard for petitioner Williams' conduct if left to his own devices, the Government invented, through the use of a clearly corrupt *agent provocateur*, and relentlessly moved forward a criminal scheme, using vast lures and pressures to induce petitioner to adopt it as his own. This clearly presents fundamental problems relating to the "moral and psychological tension of a criminal justice system in which deception is a central element." M. Boudin, Book Review, 35 Stanford L. Rev. 621, 624 (1983). Government conduct of the duration and scope involved here was not present in the other

Abscam cases. Consequently, this case raises a number of important legal issues relating to the administration of justice in this country, never before decided by this Court. The case is thus an appropriate one in which this Court may provide clarification and delimitation of appropriate Government conduct. Without review here, the Government will have in effect a blank check. This is too broad an allocation of power to the prosecuting authorities.

I. IT IS NOT DISPUTED THAT THE SUPPLEMENTAL INSTRUCTION ON THE TIME FOR DETERMINING PREDISPOSITION WAS WRONG AS A GENERAL PROPOSITION OF LAW.

A. The Government's Interpretation of the Law of Entrapment Leads to Inconsistent Availability of the Defense.

As the court of appeals clearly stated (*United States* v. *Williams*, 705 F.2d 603, 618 (2d Cir. 1983); App. 31a) the supplemental instruction given by the district court concerning the time for determining predisposition was erroneous. Neither party has challenged that ruling. The parties do differ, however, as to the correct "point of time" on this fundamental issue. Petitioner Williams maintains that the predisposition inquiry should focus on the time when "the Government agent first approached the defendant and began his efforts to induce commission of a crime." Pet. 16. The Government, echoing the appellate court, contends that predisposition should be determined at the later time, after extensive build-up, when the Government agents first suggest to an individual that he commit a crime. Br. in Opp. 9.

The Government's interpretation of the law is much too narrow. It allows the Government to grease the slippery slope, though there is then no predisposition, and to use a period of time to invent, organize and develop an atmosphere leading to crime before actually

suggesting it. Moreover, such a rule would lead to clear, though fortuitous, inconsistencies. When a Government agent approaches an "otherwise innocent" individual, suggests the commission of a crime, and then devotes several months to overcoming that person's reluctance to criminal activities, predisposition would be determined on the date of the agent's first contact with the targeted individual. In other words, the jury would focus on the period of time before the Government interfered in any way with the target's free will. If that same Government agent is more devious, however, and spends several months overcoming the reluctance that indicates a lack of predisposition before suggesting the commission of a crime, then predisposition would be determined at a much later date even though the Government inducements are the same in all meaningful respects. In effect, the Government would be allowed to manufacture a crime in the latter situation, but not in the former. Surely this Court did not intend such an inconsistent result when it established the entrapment defense. *See Sherman* v. *United States*, 356 U.S. 369; *Sorrells* v. *United States*, 287 U.S. 435. On the contrary, the Court meant *pre*disposition to be disposition *before the Government starts working to bring about a crime*, and this does not depend upon the timing of the direct criminal suggestion.

The Government's attempts to justify the inconsistency on the basis that "simply cultivating the friendship of a target preparatory to presenting a criminal opportunity is not inducement to commit a crime." Br. in Opp. 11. That analysis, however, oversimplifies what really happens when a Government agent approaches a target. In addition to feigning friendship, the agent typically uses a wider range of deception to erode his "friend's" resistance to crime. Here, for example, the Government agents dangled great and increasing lures, switched the focus of a legitimate venture concerning the production of paint pigment to one involving titanium metal and

government contracts, and deliberately enlisted the aid of petitioner's friends and acquaintances to induce him to commit a criminal act.[1] Under the Government's analysis, these actions would not support the entrapment defense if they had occurred after the direct suggestion of criminality. The whole purpose of *pre*disposition in the entrapment defense is defeated if such conduct on the part of the Government is disregarded here merely because the numerous government pressures occurred before the criminal suggestion was made. Inconsistencies of this sort will only be avoided if the crucial point for determining predisposition in all entrapment inquiries is the time when the Government agents first approach a target and take steps designed to induce the commission of a crime.

B. The Erroneous Supplemental Instruction Had a "Substantial Influence" on the Jury Verdict.

As the petition shows, this Court has long held that a verdict in a criminal case must be reversed whenever a clearly erroneous jury instruction has a "substantial influence" upon the jury's decision-making process. Pet. 17, *quoting Kotteakos* v. *United States*, 328 U.S. 750, 764-65. Petitioner also contends that such an influence was obvious in this case. Pet. 18-19.

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[1] The Government's willingness to do everything in its power to *make* a crime appear before the cameras is evident in the following interchange between Mel Weinberg and George Katz:

> GK: He's not a guy, he's not a doer, you know, quietly behind the scenes, you know, he, us, may move a little bit, us (IA) got a lot of confidence in him and Sandy got lots and lots of confidence, but let me tell you this here between you and me, he's in a very, very powerful position here, the committees that he heads, you understand?
>
> MW: Yeah.
>
> GK: But he doesn't use that power for any advantages.
>
> MW: Oh, how can we make him use it?

Ex. FE. (Feinberg Ex. E, June 10, 1979.)

The Government does not dispute this well-established statement of the law. Instead, it implies that the "substantial influence" disappears when the entrapment charge is viewed in its entirety—i.e., the specific instruction plus the "rereading of the full charge on entrapment which correctly set forth the applicable principles." Br. in Opp. 10.[2] First, the cases cited by the Government, which say the charge must be viewed as a whole and not in isolation do not involve *a supplemental instruction responsive to a specific jury question.* A distinct instruction such as this necessarily stands apart from the rest of the charge. *See* Pet. 18. Second, since it was the first charge which led to the jury's question, it is inconceivable that rereading the same charge could have helped to resolve the jury's doubt. In the jury's mind, only the specific instruction answered the timing question. And that instruction was admittedly wrong. In the circumstances in which it was given, it is clear that this erroneous instruction played a crucial role in the verdict in this case.

The Government also argues that the facts of the case are the "most important" countervailing factor against reversal. *See* Br. in Opp. 10. It finds that the "criminal opportunity was accepted when it was first presented," and assumes that the jury would have made the same factual findings. *Id.* But we simply do not know what conclusions the jury would have actually reached in applying a correct charge to the contradictory and massive facts presented during the month-long trial. Nor can we assume, as the Second Circuit did, that the jury would reach a particular result when the petitioner's liberty is at stake. To ensure that the petitioner was found guilty beyond a reasonable doubt, the jury must be allowed to reach a verdict using the proper legal standards.

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[2] The Government also suggests that reversal is not warranted because the issue was not properly preserved for review. This contention has already been answered in footnote 9 of the Petition.

II. THE ACTIONS OF THE GOVERNMENT AGENTS WERE SO OUTRAGEOUS THAT THEY AMOUNT TO A DENIAL OF DUE PROCESS OF LAW.

Applying standards set by the Government itself,[3] petitioner Williams identifies elements of the Abscam investigations which show the outrageousness of the Government conduct. Pet. 23-27. The Government points to other facts which allegedly show that "agents acted properly at each stage of the investigation." Br. in Opp. 13-14. Not surprisingly, the Government never indicates what standards it used to reach this conclusion. *See id.*

As a preliminary matter, it must be noted that the Government often presents facts in a misleading manner in order to reach its conclusion. It truthfully states that petitioners approached the agents, but fails to point out that petitioners were responding to an apparently legitimate opportunity for financing a legitimate business venture. *See* Br. in Opp. 13. It states that Errichetti described Feinberg as the Senator's "bag man," without mentioning that Weinberg may have instructed Errichetti and others to make such statements in order to convince unsuspecting F.B.I. agents that Senator Williams was in

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[3] In December of 1976, the Department of Justice ("the Department") promulgated Guidelines on the Use of Informants in Criminal Investigations. DP Ex. 6. F.B.I. Director Webster and Assistant Attorney General Heymann testified that they ostensibly adhered to three additional safeguards adopted to implement the Guidelines in the context of the Abscam investigation. *See* DP Ex. 110. It is these safeguards that the petitioner is now suggesting should form the outer limits of the due process defense.

The Government, in response, implies that these safeguards go beyond constitutional requirements. Br. in Opp. p. 16, n.8. This is surprising, when the high-ranking officials named above previously described the safeguards in terms that reek of due process concerns: i.e., to ensure that such operations are conducted in a "fair" manner, and as essential to the "fair" conduct of an investigation. DP Ex. 110, at 138.

fact corrupt.[4] It attributes the government contract idea to Williams' associate, George Katz, who proposed it in May of 1979, Br. in Opp. 4, 14, but fails to mention that, a month earlier, on April 23, 1979, the Government agent, Mel Weinberg, had raised the question whether "Williams [can] get us the bids on" "government contracts." *See* Pet. 6. Significantly, the Government also excludes the fact that the idea was rejected at that earlier time. *Id.* When these omissions are considered, it becomes apparent that the facts show the deliberate creation of crime by Government agents, instead of the exposure of existing corruption suggested by the Government. Br. in Opp. 14.

More important than the factual disputes, however, is the fundamental problem that both parties to this case are making their outrageous due process arguments in a void. This Court has considered the possibility of a due process defense in an entrapment-like setting only twice. *See Hampton* v. *United States*, 425 U.S. 484; *United*

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[4] During a March 1, 1979 conversation between one Edward Ellis, and Weinberg, Ellis described Feinberg only as Williams' "man", "boy", or "best man" at his wedding. *See* 128 Cong. Rec. S1497-98 (March 3, 1982). By contrast, in a short conversation occurring on March 5, 1979, attended by F.B.I. Agent McCarthy as well as Weinberg, Ellis referred to Feinberg as Williams' "bag man" on at least five separate occasions. *See* 128 Cong. Rec. S1498-1500. Other excerpts show that Weinberg had planted the bag man notion in Ellis' mind. First, Weinberg and Ellis met a half hour before the March 5 meeting to prepare for it. *See id.* at 1498. Second, in a March 1 telephone conversation with William Hyman, Ellis' partner, Weinberg said that "there's no problem" getting the loan "if he [Ellis] does what I tell him . . . When I spoke to you down in Florida." *Id.* Apparently they had discussed what should be said in advance of this March 1 call. Third, in a March 8 meeting, Errichetti admitted telling Ellis to make the "bag man" statement. *See id.* at 1502. Both Errichetti and Feinberg, contrary to prior assertions, claimed at this time that Ellis had never even met Senator Williams. *Id.* at 1502, 1504. Thus, it seems probable that the bag man notion was in all cases a fabrication contrived by Weinberg.

This matter is referred to further at p. 12, below, and in Appendix C to this brief, pp. 7a-9a.

States v. *Russell*, 411 U.S. 423. In each case the Court was confronted with a specific due process claim relating to the detection of drug-related transactions, and in each case the Court developed a narrow rule to suit the situation.[6] The Court has never defined the type of police over-involvement that would give rise to such a defense. Nor has the Court dealt with the boundaries of the due process defense in areas outside the realm of contraband. Is due process protection limited only to coercion, violence, or brutality to the person? Does it extend to the presentation of unrealistic and excessive financial inducements? Or is it something in between these two extremes, such as the violation of the Guidelines established by the Government to ensure fairness in this investigation? Each of these three alternatives has been presented in this case alone. Other parties and other courts addressing the issue have also used a variety of alternate approaches. Absent an express ruling from this Court on this matter, the lower federal courts will continue to be confronted with a diversity of theories, and they will produce diverse and often incompatible opinions.

As the use of undercover operations by law enforcement agencies becomes more prevalent, the outrageousness/due process defense is likely to be presented to the lower federal courts with increasing frequency. In this situation, this Court should provide clearer and more definitive guidance regarding the elusive but crucial boundary between acceptable conduct, and intolerable conduct, where Government participation in crime is involved, at least as those questions are involved on the facts of this case. The months of active, insidious manipulation and enticement involved here make this case a particularly appropriate one in which this issue should be addressed.

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[6] The rule that evolved from these cases is that due process is not violated simply because Government agents provided an essential ingredient for the manufacture of an illicit drug or the illicit drug itself, where there was *ongoing* and *preexisting* criminal activity.

III. THE FOURTH AMENDMENT PROHIBITS WARRANTLESS ELECTRONIC SURVEILLANCE WHERE THERE IS NO SUSPICION OF PRIOR OR ONGOING CRIMINAL CONDUCT.

Petitioner Williams contends that the Fourth Amendment was violated when the Government subjected him and his associates to extensive warrantless audio and video surveillance despite the absence of any reason to suspect the appearance of particular criminal conduct. Pet. 27-30. The Government claims, *inter alia*, that the surveillance was justified because it resulted in the accurate presentation of factual evidence to the jury. Br. in Opp. 21. But ends have never justified means where constitutional rights are involved. If ends controlled then there would not be any Fourth Amendment exclusionary rule, since virtually all illegal searches and seizures result in the availability of incriminating and probative evidence. The exclusionary rule exists because the proper concern in a Fourth Amendment context is the intrusion into privacy occasioned by the Government's conduct.

The Government also maintains that all surveillance in this case was "consensual surveillance," approved by this Court in *United States* v. *White*, 401 U.S. 745. As indicated in the Petition, it is doubtful whether *White* was ever intended to apply to the type of facts present in this case. Pet. 29. Moreover, the doctrinal foundation of *White* is substantially inconsistent with *Katz* v. *United States*, 389 U.S. 347, *Terry* v. *Ohio*, 392 U.S. 1, and their progeny. In light of those cases, the Court would be particularly hard-pressed to justify the *commencement* of electronic surveillance without a warrant where no suspicion of criminality exists—which was not the case in *White*. Surely a citizen who, so far as the Government is aware, has not previously engaged in crime or is not expected to engage in a particular crime, has a justifiable expectation that his private conversations will not be surreptitiously intercepted and broadcast to the world, at least not in the absence of a determination by a neu-

tral and detached judicial officer that probable cause for such an invasion of privacy exists. This is surely no more than was decided in *Katz*.

Sustaining what was done here will open the door to virtually unlimited surveillance of all citizens anywhere whenever a policeman or Government officer chooses to do so. Such conduct should be subject to some sort of protection. At the very least, "specific and articulable facts, taken together with rational inferences therefrom" in support of a belief in criminal activity should be required. *Cf. Terry* v. *Ohio*, 392 U.S. 1, 21. The time is ripe for the Court to review the "consensual surveillance" issue to determine whether the consent of a Government agent is sufficient, in the absence of suspicion of prior or ongoing criminal conduct, to remove extensive electronic surveillance from the privacy requirements of the Fourth Amendment.

IV. THE PROCEEDING UNDER SECTION 2255 NOW PENDING IN THE EASTERN DISTRICT OF NEW YORK.

Since the Petition was filed in this case, a proceeding has been filed (on November 14, 1983) by other counsel in the Eastern District of New York seeking a writ of habeas corpus under 28 U.S.C. § 2255. A copy of that petition, with all of the exhibits attached to it, has been lodged with the Clerk of this Court.

The petition under section 2255 is based on several grounds, briefly summarized here, shedding further light on the Government's conduct in this case.

A. Tampering with the January 15, 1980 Video Tape.

The habeas corpus petition asserts that a portion of the important video tape of January 15, 1980 was recorded and then erased. This contention is supported by two affidavits, which are attached as Appendix A and Appendix B to this brief. The entire tape, without erasure, constituted *Brady* material, and is discoverable un-

der Rule 16 of the Federal Rules of Criminal Procedure. The failure of the Government to notify both the court and defense counsel of its failure to preserve the entire taped portion deprived Senator Williams of a significant opportunity to present his defense and violated due process.

B. Exculpatory Evidence Was Improperly Withheld.

More than half of the trial transcript in this case concerned prior transactions in which the prosecution claimed that the Senator used his influence to advance his personal financial interests. There is no doubt that this evidence played an important role and that it was highly influential with the jury. The habeas corpus petition contains a substantial showing that evidence was withheld by the prosecutors, and that this evidence supports the contention that there was no wrongdoing by Senator Williams.

The habeas corpus petition contains material which was obtained in April and May, 1983, pursuant to a request under the Freedom of Information Act. The evidence consists of at least fifty "302 memoranda" from the files of the New York field offices (Brooklyn-Queens) of the Federal Bureau of Investigation. These are memoranda prepared by FBI agents stating the results of their field investigations of individuals concerning Senator Williams' alleged use of his influence in connection with the Biocel and Ritz-Carlton matters.

As made available, none of these 302 memoranda shows any improper use of such influence. In fact, many of the memoranda contain exculpatory statements made in response to the agents' questions.

All of this material was in the Government's hands at the time of trial, yet none of it was made available in response to *Brady* demands made by petitioner's trial counsel. If it had been made available, petitioner's counsel

could have called some or all of these persons as witnesses, and much of the Government's case on predisposition would have collapsed. The opinions of both the trial judge (Pet. App. 79a-80a) and the court of appeals (Pet. App. 43a-44a) show the crucial significance of this evidence which the Government wrongfully withheld.

C. *"Bag Man".*

Probably the most important piece of evidence used against Senator Williams was the statement that Feinberg was a "bag man" for the Senator. This was relied on heavily at the trial, T 1230, 3540, 3794-96, 5152, 5169-70, 5236, 5238, 5243, in the Government's Post-Hearing Memorandum of Law in Opposition to Motions to Dismiss and for a New Trial, pp. 7, 8, 16, 18, 24, 43, 45, and in the Government's brief before the Second Circuit, pp. 2, 4, 21, 23, 37, 42, 47. It was accepted and was obviously influential in Judge Pratt's opinion on the due process arguments, and was referred to by the court of appeals. Pet. App. 7a.

Based upon an affidavit of Edward Ellis, which is attached as Appendix C to this Reply Brief, the petition for habeas corpus asserts that this was at all times a fabrication contrived by Weinberg, the *agent provocateur* Government operative in this case. If, as the habeas corpus petition asserts, the "bag man" epithet was manufactured by Weinberg, this is further and clear support for the contention that the conduct of the Government in this case was outrageous, and a violation of due process.

D. Selective Prosecution.

Senator Williams properly raised the question of selective prosecution before the district court, but that court concluded that Williams was not the victim of selective prosecution.

The petition for habeas corpus makes new allegations with respect to this issue. In particular, it is supported by an affidavit of Joseph Meltzer, which is attached as

Appendix D to this Reply Brief. It is further supported by the affidavit of Edward Ellis, to which reference has already been made, and which appears as Appendix C, *infra*, pp. 7a-9a.

These affidavits, together with the material already set forth in n.4 on p. 7, above, support the view that Williams was improperly targeted in this case, and that, as a part of this planned operation, Ellis was coached by Weinberg to say that Feinberg was a "bag man" for Williams. This was all done by the Government despite the lack of any prior basis for suspecting that Senator Williams had been, was, or would soon be, engaged in the type of criminal conduct they subsequently tried to foment.[6]

Indeed, the only possible basis for subjecting Senator Williams to an investigation after his name was mentioned was the offhand remark of Angelo Errichetti, a person of proven dishonesty, that the Senator had a "bag man," and this statement is now relied upon by the Government in its Brief in Opposition (Br. in Opp. 14). If the "bag man" epithet was wrongfully "prompted" by the Government as a part of its effort to "nail" Senator Williams (see Meltzer affidavit, Appendix D, p. 11a, par. 7, below), the result has obviously been devastating. The affidavit of Edward Ellis, in Appendix C, taken together with the affidavit of Joseph Meltzer, in Appendix D, point in strong terms towards a case of selective prosecution and intentional creation of strongly prejudicial evidence in promoting that prosecution.

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[6] This is established by the testimony of the Government prosecutor, Thomas Puccio, that he "did not have any personal reason to question Senator Williams' integrity before his name came up in this case," DP 413-14, and was buttressed by FBI agent Good's acquiescence in the statement that the FBI was "starting with a clean slate" in the Williams matter. DP 778.

It is recognized that this material summarized from the habeas corpus petition now pending in the Eastern District of New York is not directly before this Court. However, it may come before this Court, and thus become an integral part of this case.

We urge the Court to grant certiorari now for the reasons stated in the Petition. We think that there are adequate bases for a grant of certiorari at this time. However, if the Court does not now accept that contention, we urge the Court to hold the Petition for Certiorari until the proceedings in the Eastern District of New York have been developed at appropriate hearings there, with possible appeal to the Second Circuit Court of Appeals. Otherwise, the case may have to be reviewed piecemeal, with resulting possible serious injustice to the petitioner.

CONCLUSION

For all of the reasons contained herein, and in the Petition, a writ of certiorari should be granted.

Respectfully submitted,

ERWIN N. GRISWOLD
Counsel of Record
CLAIRE L. SHAPIRO
JONES, DAY, REAVIS & POGUE
1735 Eye Street, N.W.
Washington, D.C. 20006
(202) 861-3898

GEORGE J. KOELZER
JOEL N. KREIZMAN
EVANS, KOELZER, OSBORNE, KREIZMAN & BASSLER
P.O. Box BB
Red Bank, New Jersey 07701
Counsel for Petitioner

November, 1983

APPENDICES

APPENDIX A

Affidavit of Perry Quaranta

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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80 CR-00575

UNITED STATES OF AMERICA

v.

HARRISON A. WILLIAMS, ET AL.

AFFIDAVIT

COUNTY OF BERGEN :
STATE OF NEW JERSEY : ss

PERRY QUARANTA, being first duly sworn, deposes and says that:

1. I am a citizen of the United States and am over 21 years of age.

2. I am the President of PQ Productions, Inc.

3. I have been involved in the fields of editing, production and directing, first in the film industry (UA-Columbia) and then in the field of video taping.

4. I have been involved in the video tape industry for more than five (5) years as a producer, director and editor and am considered an expert in this field.

5. On September 6, 1983, I examined a video tape recording dated January 15, 1980 between two people. Appearing on this video tape were former United States Senator Harrison A. Williams and an unidentified male

wearing what appeared to be a type of Arab headdress. At the start of this video tape, one camera was situated to show the entry of both men into what appeared to be a living room. After the men approached a sofa and easy chair located on the left side of the picture, there was a switchover to another camera which was located at a different angle. It is obvious on the video tape that there were two cameras used for the video tape recording.

6. Upon a review of the video tape referred to herein, I discovered two "breaks" in the said video tape. The first "break" occuring, as per the timer superimposed on the tape, at 19:15:17; and the second break at 19:20:44.

7. The first "break" lasted for approximately one (1) minute and thirty five (35) seconds as shown by the superimposed timer and was caused by stopping and then restarting the video recorder.

8. The second "break" was caused by editing the tape, i.e. making a re-recording over an existing prior recording, proving that the tape had to have been tampered with in order to make the re-recording change. This break lasted approximately twenty-five (25) seconds as shown by the superimposed timer.

9. Examination of the video tape referred to hereinabove was made with the following equipment: Sony ¾" VO-5850; Micro-time Time Base Corrector-2020; and a Videotek Monitor with cross pulse and underscan.

/s/ Perry Quaranta
PERRY QUARANTA

Subscribed and sworn to before me
this 12th day of September, 1983.

/s/ Anthony Corbello
ANTHONY CORBELLO
A Notary Public of New Jersey
My Commission Expires June 18, 1984

APPENDIX B

Affidavit of Stephen K. Spyker

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---

80 CR-00575

UNITED STATES OF AMERICA

v.

HARRISON A. WILLIAMS, ET AL.

AFFIDAVIT

COUNTY OF NEW YORK :
STATE OF NEW YORK : ss

STEPHEN K. SPYKER, being first duly sworn, deposes and says that:

1. I am a citizen of the United States and am over 21 years of age.

2. I am the Chief Engineer of Viedo 44 which is a division of COMPU-EDIT, INC.

3. I have had over ten (10) years experience in video engineering, first in TV broadcasting and later in television production and post-production (editing) and am an expert in the field of video recording.

4. On September 21, 1983, I examined a ¾" tape of former United States Senator Harrison Williams and an-

other person dressed in some form of Arab garb, i.e. wearing what appeared to be a bernoose on his head. The tape was of generally poor quality and appeared to be several generations removed from the original.

5. Upon reviewing the tape I detected the following, with the basis being that at all times that are given are the ones that are superimposed times as shown on the viedotape and given in hours, minutes and seconds. The date superimposed on the videotape was 01-15-80 (i.e. January 15, 1980):

a) At 19:11:23 the recording machine was apparently stopped and then started again at 19:12:46 so that there was an elapsed time of approximately one (1) minute and twenty three (23) seconds missing. After stopping, it took between five (5) and (6) seconds for the videotape recorder to gain enough speed to start producing a picture without any gliches.

b) At 19:20:44 there is another jump to 19:21:09, with twenty five (25) seconds missing. This edit, totally unlike the first at 19:11:23 was what we would call a "clean" edit, meaning that there was no break-up or loss of any video associated with it. This edit could not have been performed by stopping the recorder and then restarting it as apparently was done during the first break.

c) The second "break" had to have been done by using sophisticated video editing equipment designed *specifically* for the purpose of editing videotape and not on a simple recording machine.

d) Since I do not know what equipment was available at the time of the recording, I cannot say for certain that the videotape was doctored at a later date. However, it seems most unlikely that:

1. Video editing equipment of the type required was used to record the original tape or

was in the room with the recording equipment; or

2. If editing equipment was available that the recording technician would bother to make a "clean" edit if his only purpose was to stop and restart the recording, especially since he did not do so on the first break at 19:11:23.

6. I also noticed what I would call a "bump" in the video and audio at 19:10:50 with no apparent loss of continuity in the conversation or the timer. This could have been caused by another "clean" edit. I can think of no other explanation of this, though perhaps there might be one.

7. There is also a point on the tape where it appears that a telephone rings in the room. I understand that testimony has been given that this phone was in another room. I am not expert enough in the field of acoustics, dor do we have the appropriate equipment to analyze the sound of the telephone to say for certain that the telephone was in the same room with Senator Williams, but it does seem to be [the sound of the phone ringing] very close to the micro-phone position.

8. I examined this tape in the presence of other engineers employed by Video 44, all of whom came to the same conclusion as I have.

9. The videotape was examined using the following equipment:

1. Sony BVU-820 Videotape Recorder with dynamic tracking.
2. Sony BVT-800 Time Base Corrector.
3. Sony VO-5600 Video Tape Recorder.
4. Tektronics 690 SR Monitor.
5. Tektronics 650 HR Monitor.

6. Crown D-75 Audio Amplifier.

7. JBL 4313B Loudspeaker.

10. There is no question or doubt in my mind whatsoever that there had been intentional editing of this videotape by use of a re-recording type of editing equipment.

/s/ Stephen K. Spyker
STEPHEN K. SPYKER

Subscribed and sworn to before me
this —— day of September, 1983.

/s/ Lisa D. Rosenbaum
LISA D. ROSENBAUM
Notary Public, State of New York
No. 31-4784661
Qualified in New York County
Commission Expires March 30, 1985

APPENDIX C

Affidavit of Edward Ellis

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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80 CR-00575

UNITED STATES OF AMERICA,
Plaintiff,

—against—

HARRISON A. WILLIAMS, *et al.*,
Defendant.

AFFIDAVIT OF EDWARD ELLIS

STATE OF NEW JERSEY, ss:

I, Edward Ellis, depose and state upon oath, the following:

1. I am the Edward Ellis to whom reference is made in certain audio tapes, made in March, 1979, which tapes were directly relevant to certain aspects of this cause as the same relates to Harrison A. Williams, Jr.

2. I offer this affidavit for the purpose of amplifying, correcting, and explicating certain misapprehensions that exist concerning any and all audio tapes upon which my voice appears. Further, I offer this affidavit in refutation of the innacurate representations made that I knew Alex Feinberg was Senator Williams' "bagman".

3. Prior to the taped conversation with Melvin Weinberg, where I am to have referred to Alex Feinberg as Senator Williams' "bagman", I had an extensive meeting with McLvin Weinberg. The ostensible purpose of this meeting was to obtain financing for Garden State Park.

4. At this meeting with Weinberg (held prior to my meeting with Jack McCloud, a/k/a Jack McCarthy), Weinberg repeatedly used the word "bagman" and referred to Alex Feinberg as Senator Williams' "bagman". I stated to Weinberg that the term "bagman" may be his term, but that I had knowledge of Alex Feinberg only as an honest attorney who was a close friend of Senator Williams. I had, in fact, met Senator Williams only once in my life, very briefly at a fundraiser.

Weinberg insisted that I use the term "bagman", in reference to Alex Feinberg, when I met with Jack McCloud. Weinberg told me that McCloud was an oldtime street politician from Boston, and that I had to use the term "bagman" in order to communicate with McCloud on his level.

Weinberg told me that the word "bagman" did not have a bad connotation in McCloud's way of thinking, and that if I did not identify Feinberg as Williams' "bagman", I would not be able to obtain my financing for Garden State Park.

5. In my association with Alex Feinberg, he never suggested Senator Williams could do anything for my proposed project, and, working toward the end of this project, Alex Feinberg never suggested Senator Williams could do anything by way of assistance (improper or otherwise) regarding this project.

6. At my meeting with Melvin Weinberg prior to the official (on tape) meeting with Jack McCloud, a/k/a Jack McCarthy, chairman of Abdul Enterprises, Inc., Weinberg coached me to say to McCloud that Alex Feinberg was Senator Williams' "bagman". This was not

my term and this was not something I knew anything about. I was told directly by Weinberg that if I refused to call Feinberg Williams' "bagman", I would not receive the funding, but that if I did use that term I would get the funding. I became very angry at Weinberg over this, but Weinberg insisted that the term was "harmless" and that McCloud would not understand the term as being derogatory.

7. I again state unequivocally, that I had no personal knowledge of any sort that Alex Feinberg was Senator Williams' "bagman", and, but for Weinberg's having put the words in my mouth by his intense coaching, and his insistence, I never would have made any such statements.

/s/ Edward Ellis
EDWARD ELLIS

Subscribed and sworn to before me this 11th day of April —, 1983.

/s/ Leslie Ray Smith
LESLIE RAY SMITH

APPENDIX D

Affidavit of Joseph Meltzer

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CR-80-00575

UNITED STATES OF AMERICA

v.

HARRISON A. WILLIAMS, *et al.*

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss

I, Joseph Meltzer, do hereby depose and state under oath as follows:

1. From the Spring of 1978 until the middle part of 1980, I was involved either directly or indirectly in the undercover operation conducted by the Federal Bureau of Investigation and now known as ABSCAM.

2. I was originally "recruited" for this operation by "Mel" Weinberg, with the backing of F.B.I. Special Agent Gunner Askerlin.

3. Originally, the "sting" operation was to be used for the recovery of stolen art and "counterfeit" securities.

4. After being "approved" by the F.B.I. for this operation, I realized that the real purpose of the "sting" was to go after certain politicians.

5. Weinberg coached me on how to get at the politicians, telling me to take them out to dinner, buy them drinks, etc. He further told me that: "If you work hard enough on it, you can get anybody. You can even get the Pope".

6. During the latter part of November or the early part of December, 1978, Weinberg mentioned a number of public officials he had been told to "set up".

7. I specifically recall that he told me he had to "nail" a United States Senator from New Jersey, Harrison Williams, "one way or another" even if he had to "frame" him to make a case.

8. He further told me that he would try to get to Williams by contacting a person he knew by the name of Sy Pollack, who was a good friend of "Bobby" Baker's who in turn was thought to be very friendly with Senator Williams.

9. I had heard of Sy Pollack (mentioned a few times by Weinberg) on a number of occasions, but have met him just once, and only recently.

10. Weinberg also asked me to "go after" United States Senator Lawton Chiles (D. Fla.), which I refused to do.

/s/ Joseph Meltzer
JOSEPH MELTZER

Subscribed and sworn to before me
this 12th day of July, 1983.

/s/ Thomas Hanell
THOMAS HANELL